



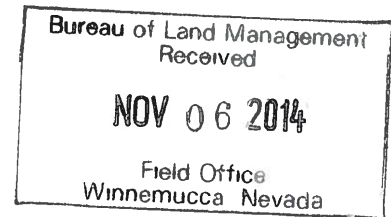
# United States Department of the Interior



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In Reply Refer To:  
3100 (NV922.L)



CERTIFIED MAIL – 9171 9690 0935 0018 6642 60

## DECISION

Susan Carter  
49 Ellis Ranch  
Santa Fe, NM 87505

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September 9, 2014  
Competitive Oil and Gas Lease Sale  
Winnemucca District

### PROTEST DISMISSED PARCELS OFFERED FOR SALE

On July 7, 2014, the Bureau of Land Management (BLM), Nevada State Office (NVSO), timely received a protest (enclosed) from Susan Carter (Carter). Carter protested eight (8) of the 29 parcels offered in the September 9, 2014, Winnemucca/Carson City Competitive Oil and Gas Lease Sale (the Sale). This decision addresses only the 8 parcels protested within the Winnemucca District (WD).

### BACKGROUND

The BLM received nominated parcels for the Sale through December 13, 2013. The nominated parcels include land in Federal mineral estate located in the BLM Nevada's WD. After the NVSO completed preliminary adjudication<sup>1</sup> of the nominated parcels, the NVSO screened each parcel to determine compliance with national and state BLM policies, including BLM's efforts related to the management of Greater Sage Grouse Habitat on public lands. The BLM is currently deferring all Greater Sage Grouse habitat acreage, including all lands within Greater Sage Grouse Preliminary Priority Habitat (PPH), Preliminary General Habitat (PGH), and within

<sup>1</sup> Preliminary adjudication is the first stage of analysis of nominated lands conducted by the State Office to prepare preliminary sale parcels for District or Field Office review. During preliminary adjudication, the State Office confirms availability of nominated lands for leasing pursuant to 40 U.S.C. § 181 *et seq.*, 43 CFR 3100 *et seq.*, and BLM policies. Once the State Office completes preliminary adjudication, it consolidates the nominated land available for leasing into a preliminary parcel list to send to the District or Field Office for NEPA analysis and leasing recommendations.

four (4) miles of leks until the Record of Decision is signed for the BLM National Greater Sage-Grouse Land Use Planning Strategy.<sup>2</sup>

On January 29, 2014, the NVSO sent a preliminary parcel list to WD for review. This review included interdisciplinary team review by BLM specialists, field visits to nominated parcels, review of conformance with the Land Use Plan (LUP),<sup>3</sup> and preparation of an Environmental Assessment (EA) documenting National Environmental Policy Act (NEPA) compliance.<sup>4</sup> The WD's preliminary EA was released on March 28, 2014, for a 20-day period of public review that ended on April 17, 2014.

The EA tiered to the existing LUP in accordance with 40 CFR 1502.20:

*Agencies are encouraged to tier their environmental impact statements to eliminate repetitive discussions of the same issues and to focus on the actual issues ripe for decision at each level of environmental review . . . the subsequent . . . environmental assessment need only summarize the issues discussed in the broader statement and incorporate discussions from the broader statement by reference and shall concentrate on the issues specific to the subsequent action.*

The BLM described its purpose and need for the Sale in its EA as follows (p. 2):

### ***1.3 Purpose and Need for Action***

*The purpose of the action is for the BLM to offer nominated parcels for competitive Oil and Gas (O&G) leasing in the September 2014 Competitive O&G Lease Sale. Offering nominated parcels for competitive O&G leasing provides private individuals the opportunity to secure leases that would allow for subsequent permitting of exploration and development to take place.*

*The sale of O&G leases is needed to allow continued exploration for O&G reserves which would help the United States meet its growing energy needs and to enable the United States to become less dependent on foreign oil sources. This action is being initiated to facilitate the WD implementation of the requirements in Executive Order (EO) 13212 (2001) and the National Energy Policy Act (2005).*

<sup>2</sup> BLM Washington-IM No. 2012-043, *Greater Sage-Grouse Interim Management Policies and Procedures* (2011); BLM Washington-IM No. 2012-44, *BLM National Greater Sage-Grouse Land Use Planning Strategy* (2011); BLM Nevada-IM No. NV-2012-058, *Revised Direction for Proposed Activities within Greater Sage-Grouse Habitat* (2012); BLM Nevada-IM No. 2014-022, *Revised Direction for Proposed Activities within Greater-Grouse Habitat* (2014); and BLM Nevada-IM No. NV-2014-032, *Direction for Oil and Gas Competitive Lease Parcel Review* (2014).

<sup>3</sup> Winnemucca District Sonoma-Gerlach Management Framework Plan (MFP), dated July 9, 1982 (BLM 1982).

<sup>4</sup> See BLM, H-1601-1, *Land Use Planning Handbook*, (Mar. 2005) (p. 42): "after the RMP is approved, any authorizations and management actions approved based on an activity-level or project-specific EIS (or EA) must be specifically provided for in the RMP or be consistent with the terms, conditions, and decisions in the approved RMP." See also 43 CFR 1610.5-3.

The EA considered two alternatives (p. 3):

1. *The No Action alternative, which considered denying or rejecting all expressions of interest to lease (parcel nominations); and*
2. *The “Proposed Action” alternative, which considered leasing all or some of the 8 nominated parcels that were sent to the WD for review.*

There were a total of 8 parcels nominated in the WD for the Sale. These 8 nominated parcels were offered for sale intact without any deferment.

On June 11, 2014, the NVSO published a *Notice of Competitive Oil and Gas Lease Sale for September 9, 2014*<sup>5</sup> (Notice), which offered 29 parcels, 8 of which are in the WD and 21 parcels in the Carson City District. This protest challenges the leasing of all 8 WD parcels described in the Notice.

## **ISSUES**

Carter did not participate in the WD’s public review of the EA by submitting comments.

The Carter protest generally alleges that leasing would be conducive to new infestations of non-native and noxious weeds, as well as potentially affect groundwater, and wild horses and burros.

The following addresses the Carter protest arguments related to the Sale. The BLM has reviewed the Carter arguments in their entirety; the substantive arguments are numbered and provided in bold with BLM responses following.

- I. **Non-Native plants and Noxious Weeds: The Proposed Action would authorize Leasing and through Site Specific Environmental Assessments would be conducive to new infestations of non-native and noxious weeds.**

### **BLM Response:**

In the 2014 Oil and Gas Leasing EA, DOI-BLM-NV-W010-2014-0013-EA (the 2014 Oil and Gas Leasing EA), the BLM acknowledged the potential for lease development to foster the growth of non-native and noxious weeds (pp. 32 and 33). Through the analysis, the BLM has determined that the following condition of approval be placed on all 2014 oil and gas leases (p. 33):

*During all phases of exploration and development, the lessee shall maintain a noxious weed control program consisting of monitoring and eradication for species listed on the Nevada Designated Noxious Weed List (NRS 555.010).*

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<sup>5</sup> The Notice contains a memorandum of general sale information, the final parcel list, and the final stipulations.

*Areas to be developed will be inventoried for the presence of invasive non-native species before disturbance. During close out operations, sites shall be inventoried for the presence of these species and treated if weeds are present.*

*The BLM will develop and the operator will implement a weed treatment program from the time operation commences until the site is abandoned. Seed and mulch used to reclaim disturbed areas shall be free of invasive non-native species.*

In conclusion, the BLM has considered and addressed this argument. Therefore, the above allegation has been considered, found to be without merit, and is dismissed.

**II. Groundwater is the primary water resource that is potentially affected by fluid mineral exploration and development, such as drilling holes for collection of data.**

BLM Response:

In the 2014 Oil and Gas Leasing EA, the BLM acknowledged the potential for lease development to impact surface and ground waters (pp. 40 and 41). In the analysis, the BLM has examined general impacts to groundwater resources from drilling and hydraulic fracturing. A more thorough NEPA analysis would be conducted before any Application for Permit to Drill is approved. From the analysis in the 2014 document, the following condition of approval will be placed on all 2014 oil and gas leases (p. 41):

*As exploration and development activities commence, the operator shall institute a hydrologic monitoring program. The details of the monitoring programs will be site specific and the intensity shall be commensurate with the level of exploration. For example, if the proponent will be conducting seismic studies, the monitoring will be limited to the identification of water resources to be monitored as activities continue; if a drilling program were to be undertaken the number of aquifers encountered, their properties, their quality, and their saturated thickness will be documented. The information collected will be submitted to the BLM and will be used to support future NEPA documentation as development progresses. Adverse impacts to surface expressions of a geothermal reservoir (hot springs), and threatened and endangered species habitat are not acceptable. The lessee will monitor the quality, quantity, and temperature of any hot or cold springs or other water resource within the Project Area whenever they are conducting activities which have the potential to impact those resources. This may require the operator to make a good faith effort to obtain access across private property. If adverse impacts do occur, BLM will require the lessee to take corrective action to mitigate the impact. Corrective action may include shutting down the operation. These are in addition to the other stipulations. The information gathered under the monitoring stipulation will be used to identify future impacts at the operational stage.*

In conclusion, the BLM has considered and addressed this argument. Therefore, the above allegation has been considered, found to be without merit, and is dismissed.

- III. The primary responsibilities of the BLM under the Wild Free-Roaming Horse and Burro Act of 1971 are to preserve and protect wild horses and burros, and to manage for healthy rangelands. This necessitates the maintenance of clean water and healthy forage. Wild horse and burros could be affected by fluid mineral resource exploration, development, and production.**

BLM Response:

As noted in the 2014 Oil and Gas Leasing EA (p. 28):

*Portions of the lease parcels are located inside of the Humboldt HA. The Humboldt HA consists of 431,544 acres, however, the acreage of the parcels inside the HA totals 1,002 acres. The Humboldt HA is not designated as a Herd Management Area (HMA) in the Sonoma-Gerlach MFP; therefore, no Appropriate Management Level has been set by the BLM.*

The 2014 Oil and Gas Leasing EA continues on to say (p. 47):

*Direct impacts to wild horses in the Humboldt HA would not occur due to O&G leasing... Should exploration or development be proposed within these leased areas, additional, site specific NEPA analysis would be completed to assess the potential impacts to wild horses.*

Through the analysis, the BLM determined the following condition of approval should be placed on all leases (p. 47):

*Controlled or Limited Surface Use:* (avoidance and/or mitigation measures to be developed.) *If wild horse or burro populations are located on sites proposed for development, it may be necessary to avoid or develop mitigation measures to reduce adverse impacts to horses. These measures may include providing alternative water sources for horses of equal quality and quantity. In the Stillwater HMA any alternate water source shall be placed one mile away from O&G operations.*

Further, the BLM has approved a phased wild horse gather for the Humboldt Herd Area (HA). The goal of the phased wild horse gather is to bring the HA to a population of zero. The NEPA analysis for this phased gather is documented in the *Humboldt Herd Area Wild Horse Gather Plan Environmental Assessment*, DOI-BLM-NV-W010-2013-0024-EA. The Decision Record (DR) and Finding of No Significant Impact (FONSI) are dated May 28, 2014.

In conclusion, the BLM has considered wild horses in reviewing the proposed leases. Therefore, the above allegation has been considered, found to be without merit, and is dismissed.

- IV. Indirect impacts from noise or surface disturbances associated with the Proposed Action could influence herd distribution and migration and cause disturbances to forage resources. Horses and burros would likely shift their movements to avoid disturbances.**

BLM Response:

As stated in the response to III, above, the Humboldt HA should have a wild horse population of zero. Any wild horses present near the proposed lease areas would be gathered over time, as disclosed in the *Humboldt Herd Area Wild Horse Gather Plan Environmental Assessment*, DOI-BLM-NV-W010-2013-0024-EA, DR and FONSI signed May 28, 2014. Further, through the analysis, the BLM determined the following condition of approval should be placed on all leases (p. 47):

*Controlled or Limited Surface Use: (avoidance and/or mitigation measures to be developed.) If wild horse or burro populations are located on sites proposed for development, it may be necessary to avoid or develop mitigation measures to reduce adverse impacts to horses. These measures may include providing alternative water sources for horses of equal quality and quantity. In the Stillwater HMA any alternate water source shall be placed one mile away from O&G operations.*

In conclusion, the BLM has considered wild horses in reviewing the proposed leases. Therefore, the above allegation has been considered, found to be without merit, and is dismissed.

**V. Operator must gain a clear understanding of local hydrology. Areas of groundwater discharge and recharge and their relationship with surface waters would be identified.**

BLM Response:

As stated in response II, above, the BLM acknowledged the potential for lease development to impact surface and ground waters in the 2014 Oil and Gas Leasing EA (pp. 40, 41). In the analysis, the BLM has examined general impacts to groundwater resources from drilling and hydraulic fracturing. A more thorough NEPA analysis would be conducted before any Application for Permit to Drill is approved. From the analysis in the 2014 document, the following condition of approval will be placed on all 2014 oil and gas leases (p. 41):

*As exploration and development activities commence, the operator shall institute a hydrologic monitoring program. The details of the monitoring programs will be site specific and the intensity shall be commensurate with the level of exploration. For example, if the proponent will be conducting seismic studies, the monitoring will be limited to the identification of water resources to be monitored as activities continue; if a drilling program were to be undertaken the number of aquifers encountered, their properties, their quality, and their saturated thickness will be documented. The information collected will be submitted to the BLM and will be used to support future NEPA documentation as development progresses. Adverse impacts to surface expressions of a geothermal reservoir (hot springs), and threatened and endangered species habitat are not acceptable. The lessee will monitor the quality, quantity, and temperature of any hot or cold springs or other water resource within the Project Area whenever they are conducting activities which have the potential to impact those resources. This may require the operator to make a good faith effort to obtain access across private property.*

*If adverse impacts do occur, BLM will require the lessee to take corrective action to mitigate the impact. Corrective action may include shutting down the operation. These are in addition to the other stipulations. The information gathered under the monitoring stipulation will be used to identify future impacts at the operational stage.*

In conclusion, the BLM has considered and addressed this argument. Therefore, the above allegation has been considered, found to be without merit, and is dismissed.

**VI. Ponds, tanks, and impoundments containing harmful liquids must be excluded from access of wildlife, livestock, horses, and burros by fencing, or netting or covering at all times when not in active use. Observations of potential problems regarding horses and burros, including mortality must be reported to the Agency.**

BLM Response:

In the 2014 Oil and Gas Leasing EA, the BLM acknowledged the potential for lease development to result in the use of harmful chemicals, specifically if hydraulic fracturing occurs (p. 38). Through the analysis, the BLM has determined that the following condition of approval be placed on all 2014 oil and gas leases (p. 38):

*Prior to exploration and development, an approved emergency spill response plan will be developed to include contingencies for hazardous material and/or hazardous waste spills.*

If hydraulic fracturing is proposed, harmful liquids would not be exposed to wildlife or livestock. Further, project-specific NEPA analysis would review the potential affects and, if necessary, develop mitigation measures to reduce impacts.

In conclusion, the BLM has considered and addressed this argument. Therefore, the above allegation has been considered, found to be without merit, and is dismissed.

**VII. The Best Management Practices, relating to fencing and covering of polluted or poisonous water, indicated that the process of fluid mineral mining is in violation of the Wild Free-Roaming Horse and Burro Act of 1971 (WFRHBA), the WFRHBA's command to "manage for healthy rangelands" and thus, should have no place in Herd Management Areas (HMAs), nor should any wild horses or burros be removed to make way for mining consideration or exploration, development or production. It is a direct violation of the WFRHBA of 1971 to impinge on HMA land. Cattle already exist here under multiple-use policy.**

BLM Response:

As stated in the response to III, above, no HMAs would be affected by the parcels included in the Sale, and the leases themselves would have no impact on wild horses or burros. The 2014 Oil and Gas Leasing EA states that, "*should exploration or development be proposed within these leased areas, additional, site specific NEPA analysis would be completed to assess the potential impacts to wild horses*" (p. 47).

Furthermore, the WFRHBA does not require BLM to “*manage for healthy rangelands.*” The WFRHBA states that BLM “*shall manage wild free-roaming horses and burros in a manner that is designed to achieve and maintain a thriving natural ecological balance on the public lands.*” This statement speaks to the quality of habitat, including available forage and water resources. This does not speak to the responsible use of potentially harmful materials in the process of mineral exploration and development. If exploration or development of the leases is proposed in the future, the site specific NEPA analysis would include Best Management Practices, Conditions of Approval and other mitigation measures to reduce the potential for wild horses, burros, livestock, wildlife, and other natural resources to have exposure to harmful materials.

Additionally, the excess wild horses present near the proposed leases would be removed through a phased gather, as described in the response to III. This phased gather is completely unrelated to the proposed oil and gas leasing.

In conclusion, the BLM has considered and addressed this argument. Therefore, the above argument has been considered, found to be without merit, and is dismissed.

### **DECISION**

To the extent that Carter has raised any allegations not specifically discussed herein, they have been considered and are found to be without merit. For this reason, and for those previously discussed, the Carter protest of the Sale is dismissed and all 8 parcels were offered for sale on September 9, 2014.

### **APPEAL INFORMATION**

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4 and Form 1842-1 (enclosed). If an appeal is taken, a notice of appeal and/or request for stay must be filed in writing, on paper, in this office, either by mail or personal delivery within 30 days after the date of service. Notices of appeal and/or request for stay that are electronically transmitted (e.g., email, facsimile, or social media) will not be accepted as timely filed. The notice of appeal is considered filed as of the date our office receives the hard copy and places our BLM date stamp on the document.

If you wish to file a petition pursuant to regulation 43 CFR 4.21 (58 FR 4939, January 19, 1993) (request) for a stay (suspension) of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay must also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate office of the Solicitor (*see* 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.




Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied,
- (2) The likelihood of the appellant's success on the merits,
- (3) The likelihood of immediate and irreparable harm if the stay is not granted, and
- (4) Whether the public interest favors granting the stay.

If you have any questions regarding this decision, please contact Michael Herder, Acting Deputy State Director, Minerals Division, at (775) 861-6585.

  
Amy Lueders  
State Director

Enclosures:

- 1- Carter Winnemucca Protest
- 2- DOI-BLM-NV-FINAL EA
- 3- Form 1842-1

cc:

WO310 (S. Wells)  
NVW0000 (G. Seidlitz)  
NVW0100 (J. Schroeder)  
NVW0000 (M. Hall)  
NV0920 (M. Herder)  
NV0920 (S. Dooman)  
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NV0920 (D. Davis)  
NV0922 (P. LaFramboise)